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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,817	08/21/2001	Christian Wagner	(Z) 98003 P US	9363

7590 06/18/2004

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Albuquerque, NM 87111

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 06/18/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

09/934,817

Applicant(s)

WAGNER ET AL.

Examiner

Etienne P LeRoux

Art Unit

2171

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 21 March 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☒ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☒ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Refer to attached document.

  
SAFET METJAHIC  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

**NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR**

**1.192(c)**

***Status of Claims:***

The statement of the status of the claims in the brief is incorrect: Claim 45 is included in the Appendix but is not listed under supra heading.

***Status of Amendments After Final:***

The statement of the status of claims contained in the brief is incorrect. Claim 45 is included in the Appendix but is not listed under supra heading.

It should be kept in mind that a patent owner cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection, or reinstate previously canceled claims. A showing under 37 CFR 1.116(b) is required and will be evaluated by the examiner for all proposed amendments after final rejection except where an amendment merely cancels claims, adopts examiner's suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner. An amendment filed at any time after final rejection but before an appeal brief is filed, may be entered upon or after filing of an appeal provided the total effect of the amendment is to (A) remove issues for appeal, and/or (B) adopt examiner suggestions.

***Grouping of Claims:***

The brief filed on 3/21/2004, includes a statement that claim groups 1-4 do not stand or fall together, but fails to present reasons in support thereof as required under 37 CFR 1.192(c)(7). MPEP § 1206. Specifically, claim groups 1-4 are unclear.

***Claims Appealed:***

The copy of the appealed claims contained in the Appendix to the brief is incorrect.

***Appellant's Arguments:***

The brief does not contain arguments of the appellant with respect to each of the issues presented for review in 37 CFR 1.192(c)(6), and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on as required by 37 CFR 1.192(c)(8).

The brief does not contain, for each rejection under 35 U.S.C. 103, an argument which specifies the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection, and an explanation how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument must explain why the references, taken as a whole do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not be properly combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of 37 CFR 1.192(c)(8)(iv).

Specifically, on page 3, Appellant states "The arguments against this rejection are set forth in the amendment of June 13, 2003." It is unclear which arguments Appellant is referencing.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne LeRoux whose telephone number is (703) 305-0620.

The examiner can normally be reached on Monday – Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (703) 308-1436.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Patent related correspondence can be forwarded via the following FAX number (703) 872-9306

Etienne LeRoux

5/25/2004